E X H I B I T A

COPY

Crim. No. 24309

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

MAURICE JOHN KEENAN,	)
Petitioner,	)
vs.	)
SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE COUNTY OF SAN FRANCISCO,	)
Respondent,	)
THE PEOPLE OF THE STATE OF CALIFORNIA,	)
Real Party in Interest.	)

SUBSTITUTION OF ATTORNEYS

TO THE COURT AND COUNSEL FOR PETITIONER:

Please take notice that with the consent of the undersigned, the California Attorney General is hereby substituted as attorney of record for the Respondent, Superior Court of the State of California in and for the City and

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County of San Francisco.

DATED: February 23, 1982

HONORABLE DANIEL H. HANLON
Judge of the Superior Court

DATED: February 23, 1982

EDWARD P. O'BRIEN
Assistant Attorney General

DATED: Febru 23, 1982

GREGORY KINSLOW
Deputy City Attorney

EOB:kgw

DECLARATION OF SERVICE BY MAIL

Re: MAURICE JOHN KLEMAN v. SUPERIOR COURT (San Francisco) No. 24309

PEOPLE - Real Party in Interest

I, Priscilla Clarfield declare that I am over 18 years of age, and not a party to the within cause; my business address is 6000 State Building, San Francisco, California 94102. I served a true copy of the attached

PETITION FOR REHEARING

on each of the following, by placing same in an envelope (or envelopes) addressed (respectively) as follows:

Honorable Arlo E. Smith, District Attorney
City & County of San Francisco
Hall of Justice
880 Bryant Street
San Francisco, California 94103

Honorable Carl M. Olsen, Clerk
City & County of San Francisco
Hall of Justice
880 Bryant Street, Room 316
San Francisco, California 94103

Steven Diaz
Deputy City Attorney
City Hall
San Francisco, California 94102

1 copy Court of Appeal
(Hand delivered)

M. Gerald Schwartzbach
Attorney at Law
1779 Union Street
San Francisco, California 94125

Each said envelope was then, on May 21, 1982, sealed and deposited in the United States mail at San Francisco, California, the county in which I am employed, with the postage thereon fully prepaid.

Executed on May 21, 1982, at San Francisco, California.

I declare under penalty of perjury that the foregoing is true and correct.

Priscilla Clarfield
DECLARANT

A P P E N D I X F

ORIGINAL

No. 24309

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

MAURICE JOHN KEENAN,

Petitioner,

vs.

SUPERIOR COURT OF THE STATE OF CALIFORNIA, IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO,

Respondent,

THE PEOPLE OF THE STATE OF CALIFORNIA,

Real Party in Interest.

FILED
2 JUL 3 P3:07
SUPREME COURT
San Francisco

MOTION TO VACATE ORDER OF APRIL 15, 1982, STRIKING PETITION FOR REHEARING AND SUBSTITUTION OF ATTORNEY; OPPOSITION TO MOTION TO STRIKE PETITION FOR REHEARING; MOTION TO DISMISS PROCEEDINGS

GEORGE DEUKMEJIAN, Attorney General
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No. 24309

IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

MAURICE JOHN KEENAN,	)
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THE PEOPLE OF THE STATE OF CALIFORNIA,	)
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MOTION TO VACATE ORDER OF APRIL 15, 1982, STRIKING PETITION FOR REHEARING AND SUBSTITUTION OF ATTORNEY; OPPOSITION TO MOTION TO STRIKE PETITION FOR REHEARING; MOTION TO DISMISS PROCEEDINGS

TO: THE HONORABLE ROSE E. BIRD, CHIEF JUSTICE, AND TO THE HONORABLE ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE STATE OF CALIFORNIA:

Pursuant to Rule 41 of the California Rules of Court, the People of the State of California and the Respondent Superior Court of the City and County of San Francisco, by and through their attorney, the Attorney General of the State of California, move herein (1) for an order vacating this Court's April 15, 1982, order striking the petition for rehearing and substitution of attorney filed on February 23, 1982; (2) in

opposition to the motion to strike the petition for rehearing filed May 21, 1982; and (3) for an order dismissing this case because it is being heard unconstitutionally.

The above-described motions and opposition will be addressed in the order presented, with an introductory background first describing the procedural history of this case. In essence, we contend that this Court's order of April 15, 1982, is void for lack of jurisdiction, having been procured without service of process. We oppose petitioner's motion to strike the May 21, 1982, petition for rehearing because said motion is factually inaccurate and based on matters not of public record. Furthermore, the statements contained within petitioner's motion establish that there has been a clear violation of the People's right to due process of law, as guaranteed by both State and Federal Constitutions, as well as a denial of respondent court's right to counsel. Finally, based on the unconstitutionality of this proceeding, the People and respondent court move for its dismissal.

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BACKGROUND

The petition for writ of mandate filed herein sought to compel respondent superior court to allocate funds for a second defense counsel under the authority of Penal Code section 987.9.[1] Keenan v. Superior Court (1982) 30 Cal.3d 750, 752. Respondent superior court denied the requested money for a second attorney, so petitioner moved, confidentially, for relief in the appellate courts. This Court issued its opinion ordering the respondent court to allocate reasonable funds for a second attorney on February 8, 1982 (id. at 750).

The People and respondent court petitioned[2] for rehearing on February 23, 1982 (Cal. Rules of Court, R. 27), contending that confidential proceedings were unauthorized because Penal Code section 987.9 did not apply to counsel, and that the People's right to procedural due process, including notice and an opportunity to be heard, was violated by the ex parte proceedings not authorized by statute. Without serving counsel for the People and respondent court, petitioner moved to strike the petition for rehearing and to strike the

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1/ Section 987.9 permits applications for funds to employ experts, investigators and others to assist in the preparation for or presentation of the defense in a capital case. The contents of any such applications are confidential.

2/ The Attorney General substituted as counsel for respondent court in place of the San Francisco City Attorney.

substitution of attorney. Despite this absence of service, on April 15, 1982, this Court granted petitioner's motion, while also directing the parties to respond to two questions by April 27, 1982, about the application of Penal Code section 987.9 to this case. The Court's order, however, was not served on the California Attorney General until May 25, 1982.

On May 6, 1982, this Court modified its decision in substantial respects, holding that though Penal Code section 987.9 did not permit funds to be allocated for a second defense counsel, respondent court abused its discretion by failing to appoint second counsel under Penal Code section 987(b). Keenan v. Superior Court (1982) 31 Cal.3d 243, 246. "By analogy" to section 987.9, the modified opinion further held that motions for appointment of counsel can be made confidentially. Id. at 249. The People and respondent court petitioned for rehearing a second time on May 21, 1982, arguing that respondent court, as opposed to the trial court judge, had no jurisdiction under section 987.9 to make the appointment, and that any confidential motions on the appointment of counsel were legally unjustified. On May 25, 1982, petitioner served on counsel for the People and respondent court his motion to strike the second petition for rehearing.

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ARGUMENT

I

THIS COURT'S ORDER OF APRIL 15, 1982, IS VOID FOR LACK OF JURISDICTION.

"Jurisdiction is the right to hear and determine; not to determine without hearing. And where, as in this case, no appearance was allowed, there could be no hearing or opportunity of being heard, and, therefore, could be no exercise of jurisdiction." Atschul v. Polack (1880) 55 Cal. 633, 641; see Sea World Corp. v. Superior Court (1973) 34 Cal.App.3d 494, 501 ("There is no exercise of jurisdiction where there is neither hearing nor opportunity to be heard.")

Rule 41 of the California Rules of Court, governing motions in an appellate court, requires service on all other parties, allowing opposition to the motion within 10 days' time of service.[3/] No motion to strike

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3/ Rule 7 - 108(B) of the Rules of Professional Conduct of the State Bar of California is the ethical guide on the subject of ex parte communications with a judge or judicial officer. This rule states:

"(B) A member of the State Bar shall not directly or indirectly, in the absence of opposing counsel, communicate with or argue to a judge or judicial officer, upon the merits of a contested matter pending before such judge or judicial officer, except in open court; nor shall he, without

petition for rehearing and substitution of attorney was served on the Office of the California Attorney General.[4] Accordingly, since the motion was heard without allowing for opposition, no jurisdiction was created for granting said motion. Atschul v. Polack, 55 Cal., supra, at 641. The "sham and deceptive proceedings" (id.) which followed from petitioner's failure to serve the California Attorney General, requires that the order of April 15, 1982, be set aside as having been obtained through extrinsic fraud. Cf. Bloniarz v. Roloson (1969) 70 Cal.3d 143, 147.

When petitioner filed the motion to strike the petition for rehearing and substitution of attorney, he was certainly on notice that the substitution had been made. Pursuant to Code of Civil Procedure section 284:

> "The attorney in an action or special proceeding may be changed at any time before or after judgment or final determination, as follows:

(Footnote 3/ continued)

> furnishing opposing counsel with a copy thereof, address a written communication to a judge or judicial officer concerning the merits of a contested matter pending before such judge or judicial officer. The rule shall not apply to ex parte matters."

4/ Declaration of Mimi Mendenhall, Custodian of Records, Office of the California Attorney General, attached hereto as Exhibit A. Since the motion was filed, this Court can simply check the Proof of Service to substantiate this fact.

1. Upon the consent of both client and attorney, filed with the clerk or entered upon the minutes; . . . ." (Emphasis added.)[5/]

Section 285 of the Code of Civil Procedure next states:

"When an attorney is changed, as provided in the last section, written notice of the change and of the substitution of a new attorney, . . . must be given to the adverse party. Until then he must recognize the former attorney."

It follows that upon receipt of the written notice of substitution of new attorney, petitioner was required to recognize the Attorney General as counsel for respondent court. See Reynolds v. Reynolds (1943) 21 Cal.2d 580, 584; Sherman v. Panno (1954) 129 Cal.App. 2d 375, 379. A court's only concerns are that the client has an attorney of record, that any change of attorney has been made as provided in section 284 of the Code of Civil Procedure, and that notice thereof has been given as required by section 285 of that code. Reynolds v. Reynolds, 21 Cal.2d, supra, at 584. The very making of

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5/ Attached hereto as Exhibit B is a copy of the notice of substitution of attorney which was filed herein on February 23, 1982, as signed by the client-respondent court, and the former and present attorneys, together with the proof of service upon counsel for petitioner.

the motion to strike the substitution of attorney establishes that petitioner had knowledge of that substitution. There is, we submit, no excuse for petitioner's failure to serve the Attorney General in this matter.[6/]

By virtue of Code of Civil Procedure section 285, it is settled in this State that a client has an absolute right to change attorneys at any stage in the action. Meadow v. Superior Court (1963) 59 Cal.2d 610, 616; Wright v. Security Nat'l Bank (1939) 13 Cal.2d 139, 141-142.[7/] It is not the prerogative of counsel for the opposing party to determine whether to recognize the substitution of attorney, for this would deny the client's right to counsel of choice. Nor may the courts unduly interfere with a party's choice of counsel. Maxwell v. Superior Court (1981) 30 Cal.3d 606, 615; Smith v. Superior Court (1968) 68 Cal.2d 547, 559; People v. Crovedi, 65 Cal.2d, supra, at 206. Denial of

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6/ When he saw fit, petitioner chose to serve the Attorney General with his reply brief of April 27, 1982, and the motion to strike petition for rehearing of May 25, 1982 (Proofs of Service attached hereto as Exhibits C and D, respectively). We thus have the spectacle of a party to a proceeding apparently deciding which pleadings and motions he will serve on the opposing party according to his own dictates. In other words, counsel has taken upon himself the decision when his communications with this Court are either properly served or not, and whether they are ex parte or not.

7/ The absoluteness of this rule is tempered by the recognition that any changing of attorney cannot be used as an excuse for delay or to disrupt the orderly processes of justice. People v. Crovedi (1966) 65 Cal.2d 199, 208. Issues relating to his counsel have delayed petitioner's trial for over two years.

the right to employ one's own counsel constitutes a denial of the due process of law guaranteed by the Fourteenth Amendment of the United States Constitution. Chandler v. Fretag (1954) 348 U.S. 3, 9-10; People v. Holland (1978) 23 Cal.3d 77, 86. Respondent court herein contends that it has been unconstitutionally deprived of its right to counsel.

The practical effect of petitioner's motion is apparent. Through the stratagem of never serving the California Attorney General with the motion to strike the petition for rehearing and substitution of attorney, respondent court was denied its right, under Rule 27 of the California Rules of Court, to file a petition for rehearing. And, by the time this Court granted petitioner's motion on April 15, 1982, any new petition for rehearing would have been untimely. This result is untenable and unconscionable.

Respondent submits that to allow the sort of gamesmanship practiced in this case -- a party moving to strike a petition for rehearing and substitution of counsel without serving the motion on opposing counsel of record -- makes a mockery of any concept of justice. One can imagine, if the shoe were on the other foot, and the People had moved to strike a defendant's brief without service on opposing counsel, thereby seeking to deprive the defendant of the right to an appeal, the legitimate cries of rage that would be heard from this or any

other court. But, instead of outcry, we learn more than a month after the order is entered that this Court has granted petitioner's unserved motion. Without overstating the matter, this case has turned into a ridiculous travesty. Motions and orders are made striking briefs and dismissing counsel of record without notice to counsel under a seal of "confidentiality" that is without authorization of law. This Court should unequivocally reject petitioner's repeated attempts to involve it in the violations of court rules, standards of ethics, and statutory and decisional law. The guise of protecting petitioner's constitutional rights does not justify the trampling of the People's and the respondent court's constitutional right to be heard.

II

OPPOSITION TO MOTION TO STRIKE PETITION FOR REHEARING.

Petitioner makes this statement in his motion to strike the People and respondent court's May 21, 1982, petition for rehearing:

> "This Court . . . has made perfectly clear that the People are not a party to this proceeding. . . ." (Motion at 1:17-18)

Not so.

Attached hereto as Exhibit E is the face-sheet of this Court's opinion as issued on February 8, 1982. It states, after listings of the petitioner's and respondent court's names, "THE PEOPLE, Real Party in

Interest" (Exhibit E). Thus, appearing on the caption of the opinion in this case is the name of the People. We cannot indulge in the assumption, evidently proposed by petitioner, that this Court was merely using the People's name in vain, on February 8, 1982, when the Court issued its opinion naming them as the Real Party in Interest.

Next, page 12 of the original printed opinion contained these words at footnote 12:

> "The People denigrate defendant's problem [etc.] . . . ." (Exhibit F attached hereto).

This hardly constitutes a clear indication, much less a "perfectly clear" one, that the People are not a party to this proceeding.[8/]

Moreover, perusing this Court's Minute Orders of April 8, 1982, which appear in vol. 11 of the California Official Reports, at p. 20, a reader again observes the People's name as the "Real Party in Interest" (Exhibit G attached hereto). As of April 8, 1982, the People could certainly consider themselves a party to this dispute.

Attached hereto as Exhibit H is a copy of an

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8/ We note, however, that appearing at 30 Cal.3d p. 758, this reference to the "People" has been changed to "Respondent."

April 15, 1982, Order of this Court.[9] This Order, too, names the "People, Real Party in Interest." On April 15, 1982, one would have to conclude that the People were, indeed, a party, otherwise why would their name be on the Order? Is the clear indication then, that the People were not a party?

Not until May 6, 1982, the date this Court modified its decision of February 8, 1982, was it stated at p. 2:

> ". . . when we first considered this matter we . . . determined that the People should not be a real party in interest."

So here, on May 6, 1982, we have the "perfectly clear" indication, in this Court's modified opinion, that the People should not be a Real Party in Interest. Of course, the second petition for rehearing is directed toward this modified decision which excludes the People.[10]

The only articulated basis for concluding that

9/ This Order was not served upon counsel for the People until May 25, 1982, more than a month after its issuance. Nor was petitioner's motion to strike the February 23, 1982, petition for rehearing and substitution of attorney served on the People (Exhibit A).

10/ Although petitioner elsewhere states that on February 5, 1981, this Court struck the designation of the People as Real Party in Interest (Motion at 1:21), nothing beyond petitioner's statement supports this conclusion. Certainly nothing in the public record supports it. If true, the Order was invalid ab initio because it was made without notice to the People, and without affording them the opportunity to be heard on their having been stricken as a party.

the People should not be a Real Party in Interest is Penal Code section 987.9, a statute which the modified opinion explicitly acknowledges has no application to appointments of counsel (Mod. Opn. Nos. 4 & 8, at pp. 2-3 & 4). Consequently, it appears that the People have been stricken as a Real Party in Interest on the sole authority of a statute having no bearing on applications for appointments of counsel. The People challenge their exclusion from this case as a party without giving them the notice and opportunity to be heard guaranteed by the United States Constitution.

Petitioner further states:

> ". . . The Attorney General is not the attorney for any party to this proceeding." (Motion at 1:18-19).

This unsupported assertion deserves a response.

The Attorney General is a constitutional officer of this State. Cal. Const. art. V, sec. 13. He is the "chief law officer of the State[.]" (ibid.), whose duty it is to "see that the laws of the State are uniformly and adequately enforced." (Ibid.). The Attorney General is the highest nonjudicial legal officer in California, and is particularly charged with supervising the administration of this State's criminal laws. Phyle v. Duffy (1948) 334 U.S. 431, 441. "The Attorney General has charge, as attorney, of all legal matters in which the State is interested. . . ." Cal. Gov't Code § 12511.

Government Code section 12512 requires that the Attorney General "shall attend the Supreme Court and prosecute or defend all causes to which the State, or any State officer is a party in his official capacity; . . . ." He is the "guardian of the public interest" (People ex rel. Deukmejian v. Brown (1981) 29 Cal.3d 150, 161) and the only person authorized to appear for the People in this Court. People v. Pacheco (1865) 29 Cal. 210, 213.

When the People are named in this Court's opinion, orders, and minutes (Exhibits E, F, and G), it was unquestionably the duty of the Attorney General to defend this cause. Cal. Gov't Code § 12512. When this Court erroneously applied Penal Code section 987.9, so as to require the State to fund the costs of co-counsel in all death penalty cases, the Attorney General was statutorily bound to defend the State treasury in a "legal matter in which the State is interested. . . ." Cal. Gov't Code § 12511. And, when this Court makes a record of judicial proceedings "confidential," without any basis in law, then the Attorney General, as the chief law officer of this State and "guardian of the public interest," is entitled to raise this matter on the People's behalf in order to assure that the law is not being violated. In all these respects, we submit the Attorney General is the attorney for the People in this proceeding, acting under express constitutional and statutory authorization.

Furthermore, the Attorney General is the attorney for the respondent superior court in this case. Although this Court, on April 15, 1982, ordered stricken the substitution of attorney filed by the respondent court, it is the position of respondent court that such order is beyond the powers of this Court under the California Constitution's separation of governmental powers. Article III, section 3, of the Constitution creates the three powers of State government: Legislative, Executive and Judicial. "Persons charged with exercise of one power may not exercise either of the others except as permitted by this Constitution." (Ibid.). For this Court to decide whom the Attorney General can or cannot represent in his executive and legal capacities, absent an actual conflict of interest, is violative of the Constitutional separation of powers.

In People v. Superior Court (Greer) (1977) 19 Cal.3d 255, this Court recognized that it is the executive who has the general authority to choose who will prosecute a case. "[J]udges do not have the power to direct the executive's choice of a representative for the People. . . ." (id. at 265), unless the prosecuting attorney suffers from a conflict of interests which might prejudice him against the accused and thereby affect or appear to affect, his ability to perform the functions of his office (Id. at 269; see People ex rel. Deukmejian v. Brown, 29 Cal.3d, supra.

In the instant case there has not been the slightest suggestion that the Attorney General is precluded from representing the respondent superior court because of any conflict of interest. The State's interest lies in upholding the respondent court's decision not to award petitioner funds under Penal Code Section 987.9 for associate counsel. Accordingly, respondent contends that any order of this Court restricting the Attorney General's right to appear as counsel for respondent court is constitutionally invalid, since the Attorney General in his executive capacity may choose to represent the respondent court.

The Attorney General has not needed access to respondent court's in camera hearings in order to show that Penal Code section 987.9 is totally inapplicable to appointments of counsel. In camera proceedings are held in a variety of different contexts, without having to disqualify the attorneys from appearing therein. For example, when a criminal defendant moves to replace his court-appointed attorney under People v. Marsden (1970) 2 Cal.3d 118, hearings are often conducted in camera in order that the defendant may reveal any basis for dissatisfaction with present counsel. See People v. Munoz (1974) 41 Cal.App.3d 62, 64. But, no decision of which we are aware has held that the prosecutor becomes disqualified from representing the People simply because he or she knows that the defendant has made a Marsden motion.

Similarly, when the privilege not to reveal the identity of an informant is invoked (Cal. Evid. Code §§ 1041 - 1042), the defense obviously is aware that the privilege has been exercised and that a hearing will be held in camera to resolve the claimed privilege. Defense attorneys are not disqualified from representing their clients on the ground that the prosecution has invoked a claim of statutory privilege. In still other instances, whether it be trade secrets (Evid. Code § 1060), or peace officer personnel records (Evid. Code § 1043), the court hears evidence in camera regarding these claims of privilege. Motions to disclose the evidence are made openly and any privileged matters are heard in camera. If appellate review is sought, then any matters over which a privilege is asserted remain confidential in the reviewing court. There is no reason why the rule should be any different for a defense motion to have a second attorney appointed by the court. The prosecutor does not have to be disqualified in a reviewing court on account of the defendant having made such motion.

The situation of a defendant making a motion to reveal the identity of a confidential informant, and the in camera proceedings held as a result of that motion, provide no support for the idea that a defendant can move in camera for the appointment of a second defense attorney. The two circumstances are not at all analogous because the defendant obviously knows that he wants the informant's

identity revealed and that the prosecutor is making a claim of privilege. Under this Court's modified ruling, the prosecutor never learns that a defense claim of privilege has been invoked because the proceedings are labelled "confidential."

There is not and has never been a reason to exclude the People or the Attorney General from this case, excepting petitioner's desire to obtain the tactical advantage of having counsel less familiar with the criminal law opposing him. This ruse on petitioner's part should be recognized for what it is.

Finally, under the California Constitution this Court is a Court "of record." Cal. Const. art. VI, sec. 1. Its records are public records, open to inspection by the public. "[T]here can be no doubt that court records are public records, available to the public in general, . . . unless a specific exception makes specific records nonpublic (see Craemer v. Superior Court (1968) 265 Cal.App.2d 216, 220-222)." Estate of Hearst (1977) 67 Cal.App.3d 777, 782; see 53 Ops. Cal. Att'y Gen. 25 (1970). Penal Code section 987.9 grants such a specific exemption by allowing certain defense requests for State funds to be made "confidentially." Penal Code section 987.9 does not allow defense requests for the appointment of co-counsel to be made confidentially. Absent any statutory exemption permitting the sort of confidential requests for funds made by the

petitioner in this case, it is the Attorney General's belief that there is no legal authorization for the confidential motions and hearings which have been conducted in this case. The Attorney General, therefore contends that the proceedings in this case are inconsistent with this State's Constitution, the public policy against secrecy in government, and are violative of the People's fundamental right to the due process of law guaranteed by the United States Constitution.

III

MOTION TO DISMISS PROCEEDINGS AS UNCONSTITUTIONAL.

Respondent Superior Court herein and the People move to dismiss this case because it has been unconstitutionally heard on the basis of a "confidential" record without any authority for it being so heard. As indicated, it is the opinion of the Attorney General that only judicial records that are expressly made confidential are not available for inspection by the general public. 53 Cal. Ops. Att'y Gen. 25-26, supra. Since the Legislature has not made motions of a criminal defendant for appointment of a second court-appointed attorney confidential, we contend that such motions cannot, consistent with this Court's status as a court "of record" (Cal. Const., art. VI, sec. 1), be made confidentially.

Moreover, because there exists no express authorization in this State's laws for confidential

motions on the appointment of counsel, it is the position of the Attorney General that such motions may not be heard ex parte under this State's Code of Judicial Conduct, Canon 3(A)(4). Penal Code section 987.9, the statute relied upon petitioner in this case, does not permit confidential motions for the appointment of counsel, and such motions cannot be considered on the basis of a sealed record. Any other conclusion means that this Court, without any statement of reasons therefor or legislative authority, has created its own category of secret proceedings. Such a Star Chamber-like review is totally alien to the fundamental concepts of constitutional government that have been practiced in this county for over two hundred years. Since this Court has not been authorized by the Legislature to hear this case in secret, confidential proceedings, it should be dismissed.

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CONCLUSION

For the foregoing reasons, as well as those stated in our petitions for rehearing, respondent and real party in interest request (1) that this Court's Order of April 15, 1982, be vacated as beyond this Court's jurisdiction; (2) that the motion to strike the second petition for rehearing be denied; and (3) that the proceedings herein be dismissed because Hearing was improvidently granted under the authority of a statute having no application to the appointment and/or funding of associate counsel.

DATED: June 3, 1982

GEORGE DEUKMEJIAN, Attorney General
of the State of California

ROBERT H. PHILIBOSIAN, Chief Assistant
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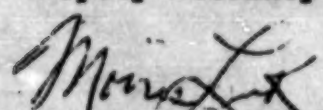

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Attorneys for Real Party in Interest